IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 459 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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KUKAVAV TALUKA PANCHAYAT

Versus

CHANDRAKANT JOSHI

Appearance:

MR HS MUNSHAW for Petitioner

MR TUSHAR MEHTA for Respondent

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 31/08/2001

ORAL JUDGEMENT

#. Rule. Mr.Mehta waives service of rule for the respondent. By the consent of the parties, the matter is taken up for final hearing today.

#. The petitioner - panchayat has challenged the award

passed by the Labour Court, Amreli in Reference No.1909/86 which was renumbered as Reference Case No.330/93 which was again renumbered as Reference Case No.210/98. The Labour Court, after considering the evidence on record, came to the conclusion that the services of the concerned employee were terminated without following provisions of Section 25-G and H of the Industrial Disputes Act. It is found that the respondent workman has served for more than 240 days, still without following the said provisions, his services were terminated. Considering the evidence on record, the Labour Court passed the order of reinstatement with 50% back-wages. The aforesaid award is challenged in the present special civil application.

#. It was argued by Mr.Munshaw that since the respondent was daily rated workman, he was not having any right to the post, and therefore, there was no question of following the procedure of section 25-F of the I.D.Act. He submitted that daily rated workman can be sent at home at any time and it is not necessary to consider whether he has served for more than 240 days. However, Mr.Munshaw fairly submitted that the concerned workman has served between 1.5.1983 to 14.3.1986.

#. In view of the clear cut findings of the Labour Court, it is clear that the respondent workman has served for more than 240 days in a particular year. In that view of the matter, the Panchayat was bound to follow the procedure as provided under the I.D.Act which was admittedly not done. In that view of the matter, the award of the Labour Court is not required to be interfered with. However, it is an admitted fact that the concerned workman is already gainfully employed with the S.T.Corporation with effect from 5.4.1992. Mr.Mehta states that the respondent workman is not willing to resume his duty with the petitioner-pancahyat. In that view of the matter, the order of reinstatement is required to be quashed and set aside and since the workman has already been gainfully employed since 5.4.1992, he will be entitled to the back-wages at the rate of 50% as awarded by the Labour Court only upto that date i.e. 5.4.1992. In that view of the matter, the award of the Labour Court is modified to the aforesaid and the respondent workman will not be entitled to the reinstatement, but he will be entitled to the back-wages at the rate of 50% from 15.3.1986 upto 5.4.1992. The award of the Labour Court is accordingly modified to the aforesaid extent.

#. Mr.Munshaw states that the petitioner will make

necessary calculation again and will pay the amount by Demand Draft to the respondent workman within a period of one month from today. The petitioner is permitted to take back the Demand Draft which is placed before this Court.

Rule is made absolute to the aforesaid extent only. No costs.

(P.B.Majmudar,J)

(pathan)